Supreme Court, U.S.
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No. 92-1118

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

FRANK J. CAMOSCIO, ET AL.

Petitioner,

v.

JOHN E. CONWAY, ET AL.

Respondents.

ON WRIT OF CERTIORARI TO THE

SUPREME COURT OF MASSACHUSETTS

* * * *

PETITION FOR WRIT OF CERTIORARI

* * * *

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THE QUESTIONS PRESENTED FOR REVIEW:

I. Did the court lack jusisdiction to hear this case because it was barred by the Doctrine of Claims Preclusion since the court had already decided on these issues in Camoscio v. Conway ?

II. Did the court err by not granting the Petitioner absolute immunity because the only statements complained about by the Respondents were court papers and affidavits filed in Camoscio v. Conway ?

III. Did the court err by failing to grant summary judgment in Camoscio's favor when Camoscio proved that the Respondents violated Massachusetts General Laws chapter 231 § 91 and Massachusetts General Laws chapter

268 § 1 ?

IV. Was Camoscio's right of Due Process violated by Judge Mather's prejudice because he was Preconceived as demonstrated by the following actions:

(1) On the first day of the trial he stated to Camoscio: "I heard about your antics. I don't like you. I don't trust you. You're a liar".

(2) He refused to step aside and declare a mistrial, thus violating Code of Ethics for Judges, Canon 3A, and

(3) He denied a motion for a Directed Verdict before hearing arguments ?

V. Was Camoscio's right of Due Process violated by Judge Mathers deny-

ing him

(1) The right to Present Favorable Arguments when he stopped Camoscio from talking about the past history of the title transfer and previous court actions proving that the property was taken fraudulently and Camoscio had acted in good faith to recover said property,

(2) Denying him the right to Present Witnesses and Face his Accuser when Judge Mathers denied him the right to Face Patricia Conway (His Accuser) and the Mendoncas to whom the Respondents allege that Camoscio had interfered with the sale of the property

who were subpoenaed, and

(3) Denying him the right to Present Favorable Evidence when Judge Mathers stopped him from placing into evidence Court Orders Barring the sale of the property and the Conways' tax returns which were subpoenaed proving that the Conways lied about their alleged losses, and also holding Camoscio in Contempt of Court for $100 for cross-examining the Respondents' witness on the alleged problem with the title which was a central issue in the case ?

VI. Was the Petitioner's Right of Redress Violated by Judge Mathers tampering with the transcript by deleting

such sections in which Judge Mathers stated: "I heard about your antics. I don't like you. I don't trust you. You're a liar". Proving that Judge Mathers was spoken to prior to the trial and was preconceived against Camoscio because Judge Mathers knew that the Appeals Court would grant Camoscio a new trial and the Judge could be sanctioned for these wrongful acts ?

VII. Can the verdict stand since this verdict is contrary to all state law and court decisions barring a party to collect damages if they fail to mitigate such damage ?

PARTIES TO THE CASE

FRANK J. CAMOSCIO,

Petitioner,

FRANCES M. HALL,

Co-Defendant in Original Case.

vs.

JOHN E. CONWAY,

Respondent,

and PATRICIA A. CONWAY,

Respondent.

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OPINION BELOW

This case was tried before a jury which found against the petitioner and co-defendant for $42,500.00 on January 25, 1991. See Appendix A, beginning on page A-1.

The petitioner filed an appeal which was denied on January 31, 1992. See Appendix B, beginning on page B-1.

The petitioner filed for further appellate review which was denied on February 26, 1992. See Appendix C, beginning on C-1.

The petitioner filed a motion with Judge Mathers of the Superior Court to set aside judgment due to the fraud in the case and the judges prejudice against the petitioner. Judge Mathers responded by striking all motions from the record and writing an order barring the petitioner

from filing any more motions in this case unless approved by him first. See Appendix D.

The petitioner then filed with the Appeals Court which reheard the case to set aside judgment and denied the motion on July 9, 1992. See Appendix E.

The petitioner tried to file a Writ of Certiorari in Washington because the Rules of the Supreme Judicial Court of Massachusetts do not apply to him. The court wrote an order in a past case baring the petitioner from filing with that court unless the justices vote to accept filing.

The Supreme Court of the United States returned the brief and appendix stating that the highest court of the State must rule first. On October 20, 1992 the high court of the State

of Massachusetts voted not to accept filing for a Petition of Equity which if granted would have set aside judgment.

JURISDICTION

The last judgment in the Court of Appeals in Massachusetts was entered on July 9, 1992. The jurisdiction of this court is invoked under 28 U.S.C.A. § 1257 and Rule 13 of this Court.

The Supreme Judicial Court of Massachusetts voted not to review the petitioners Petition for Equity on October 20, 1992.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment, Section 1 to the Constitution of the United States provides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws".

The petitioner also states that Massachusetts General Laws chapter 231 § 91 is the central issue in this case. This law is found in Appendix F, beginning on page F-1.

STATEMENT OF THE CASE

The Respondents John E. Conway and Patricia A. Conway filed suit against the Petitioners Frank J. Camoscio and Frances M. Hall in September of 1988 for damages arising out of Frank J. Camoscio v. John E. Conway. Camoscio responded by filing an answer and counterclaim to the complaint. Camoscio then took depositions on both Respondents in May of 1990.

The Respondents then filed an amended complaint with a motion for summary judgment. Camoscio responded by filing another counterclaim and a motion for summary judgment.

On June 18, 1990 Judge Prince heard the motions for summary judgment and stated that the trial would take place in August of 1990. The Petitioners appeared at the trial ready to

start but Judge Prince stated that he has not finished acting on the motions for summary judgment. He also stated that a trial may not be necessary be cause he may find in the Petitioners' favor.

The Petitioner Camoscio states that the docket sheet is not a true reflection of the motions filed with the court because in each case the Petitioners filed their motions complying with Rule 9(a). Because Walter Sullivan attorney for the Respondents failed to send the Petitioners copies of motions filed with the court, the Petitioners adopted a policy of sending a copy of every document sent to Attorney Sullivan to the court. If Sullivan responded or the time limit expired under Rule 9(a) then the Petitioner sent a copy of all documents in his possession to the court with a cover letter and

affidavit.

In December of 1990 Judge Prince came down with his written decision for summary judgment.

The Petitioner Camoscio was then contacted for a pre-trial conference on January 15, 1991. Appearing before Judge Steadman the matter was rung up for an immediate trial against the outrage of Camoscio because it gave him no time to subpoena witnesses to the trial. Judge Steadman was also informed that Petitioner Frances Hall was too ill to testify and the trial should be postponed for at least 30 to 60 days for the sake of justice. On January 18, 1991 the Petitioner Frances Hall had legal counsel Americo Ferullo file a motion to enlarge the time for a trial but Judge Mathers denied this motion.

During the trial which occurred

in January, 1991 the Petitioner was prohibited from asking questions on the same material which the Respondents were allowed to present in testimony. Judge Mather's prejudice against Camoscio during the trial will be discussed at great length in Reasons For Granting Writ.

The jury found against the Petitioners for $42,500.

The Petitioners filed a Notice of Appeal and ordered a copy of the transcript.

REASONS FOR GRANTING WRIT

A. DOCTRINE OF CLAIMS PRECLUSION BARS SUIT

The Respondents are barred from collecting any damages because of the doctrine of claims preclusion. Attached to their amended complaint is a copy of Judge Steadman's decision giving John Conway summary judgment because Camoscio should have raised this issue in the original court action. Judge Steadman cites Heacock v. Heacock, 402 Mass. 21 (1988), "[I]t applies only where both actions were based on the same claim. "Id. In the original action, Conway collected $500 damages. The court awarded him summary judgment. The only damages in question are those arising out of the original court action.

Camoscio raised this argument in his Motion for Reconsideration and Summary Judgment.

The Respondents in their amended complaint state in paragraph 9 that the Petitioners circulated false statements concerning the ownership of the property. In answers to interrogatories the Respondents admitted that the statements complained of are those filed in Camoscio v. Conway proving that this action is the same action, thus barred by the doctrine of claims preclusion.

B. THE PETITIONER IS ENTITLED TO ABSOLUTE IMMUNITY

According to the Respondent's interrogatories the only statements being complained about are those made by the Petitioners in the court case Frank J. Camoscio v. John E. Conway.

At the trial John Conway testified that the malicious statements referred to in his complaint are those filed in the court.
See Transcript, volume III, page 68 lines 8-14 and volume II, page 111 lines 1-7.
Since the statements complained of were made in Camoscio v. Conway, then these statements are privileged and the Petitioners are entitled to absolute immunity. The court in its wisdom adopted this policy in order to prevent people

from testifying with apprehension for fear of a law suit. The Petitioner Camoscio cites the following cases: Mezullo v. Maletz, 331 Mass. 233, 118 N.E. 2d 356, Aborn v. Lipson (1970) 256 N.E. 2d 442, 357 Mass. 71, "Words spoken by a witness in the course of judicial proceedings are absolutely privileged, if pertinent to the proceedings, even if uttered maliciously or in bad faith, and words 'pertinent to proceedings' are not to be construed narrowly", and Smith v. Suburban Restaurants, Inc. (1978) 373 N.E. 2d 215, 374 Mass. 528, "Absolute privilege of an attorney to publish false and defamatory matter in communications preliminary to a proposed judicial proceeding applies only where proceeding is contemplated in good faith and is under serious consideration".

C. THE COURT ERRED BY FAILING TO GRANT SUMMARY JUDGMENT IN THE PETITIONER'S FAVOR

The Petitioner filed for summary judgment under the original verified complaint and the amended verified complaint.

The Petitioner also filed a copy of his outline notes which proved that he made concise arguments citing Massachusetts General Laws chapter 231 § 91. The Petitioner stated that both Respondents who signed a verified complaint could not state what statements the Petitioner made that were false, malicious, and defamatory. Under this law the Respondents had a duty to inform the Petitioner of the exact statements complained about. Under the law, the Respondents were bound to inform the Petitioner fourteen days prior to the trial,

but, to date, the only statements the Respondents could make are that the entire Camoscio v. Conway contained these statements.

Judge Prince had a duty to find in the Petitioners favor because the Respondents could not cite one statement that was false, malicious or defamatory made knowingly by the Petitioners as stated in their amended verified complaint. Camoscio also proved to the court that John E. Conway committed perjury by making sworn statements concerning rent collected on the property. In his interrogatories dated February 5, 1990, he claimed that he had collected $10,400 in rent.
On February 7, 1990 Conway claimed in an affidavit he had collected $9,000 in rent.
During a deposition on June 6, 1990, he claimed he had collected $12,000 in

rent.

Judge Prince had a duty to find in the Petitioner's favor because there was no question that the Respondents failed to conform with Massachusetts General Laws chapter 231 § 91. There was also no question that perjury had been committed by John Conway in this case.

D. THE PETITIONER WAS DENIED DUE PROCESS BY JUDGE MATHERS FOR FAILING TO BE IMPARTIAL.

Judge Mathers was highly prejudice against the Petitioner Camoscio. During the course of the trial, he called Camoscio a liar at the side bar twice. The first occurrence does not appear in the transcript but did occur on January 22, 1991 when Judge Mathers told Camoscio that he's nothing but a liar and that he has heard about Camoscio's courtroom antics. On the second day of the trial, found in volume II page 90 of the Transcript, Judge Mathers says to Camoscio: "I believe you would [lie] and I don't believe you, and I don't trust you, you are a liar". Camoscio asked that Judge Mathers declare a mistrial because of his biasness against him. Judge Mathers never ac-

knowledged nor denied Camoscio's request for a mistrial because of the judge's attitude toward Camoscio calling him a liar at the side bar. See volume III page 110 lines 6-14 of the Transcript.

There is no question that Judge Mathers was prejudice against Camoscio, otherwise, he would not have called Camoscio a liar. Judge Mathers had a duty to recuse himself if he could not act impartially. The Canon of Ethics for judges instructs judges to recuse themselves if they cannot act impartially. The Petitioner cites the following cases: Brunnenkant v. Laird, 360 F. Supp. 1330, "Essence of a fair and impartial adjudication is not only a due process hearing but also a decision containing findings based on sufficient evidence. U.S.C.A. Const. Amend. 1", and Pollgreen v. Morris,

496 F. Supp. 1042, "Fundamental indispensable protections of procedural due process are notice and right to be heard by impartial decision maker, and both must be granted at meaningful time and in meaningful manner. U.S.C.A. Const. Amend. 5".

The judge's prejudice is clearly shown by the fact that he denied Camoscio's motion for a directed verdict before even hearing arguments. This act proved beyond any question that the judge violated his duty as outlined in Canon 3A.
See Transcript volume II, page 150 lines 17-21 and page 173 lines 8-25. This act alone proved that Judge Mathers was highly prejudice against Camoscio.

E. THE PETITIONER WAS DENIED THE RIGHT TO PRESENT FAVORABLE ARGUMENTS, WITNESSES AND EVIDENCE, THUS DENYING HIM DUE PROCESS.

Judge Steadman on January 15, 1991 wanted an immediate trial in this matter over the objections of Camoscio who asked the court for at least a thirty day extension of time to subpoena in witnesses. Judge Steadman set the trial date for January 22, 1991. Due to January 21 being Martin Luther King Day, this allowed Camoscio only three business days in which to subpoena witnesses. Judge Mathers during the trial would only allow Camoscio the right to enforce subpoenas that were served in hand with proof of service.

See Transcript volume II page 151 lines 22-25 and page 152 lines 1-7.

This part of the transcript shows that Camoscio was denied the right to be heard in a meaningful manner. Due process was violated because Camoscio could prove that his witnesses were served in hand, therefore, the judge should have enforced the subpoenas. Camoscio informed Judge Mathers that Mary Ann Mendonca was served in hand and if the judge wished to check he could call the deputy sheriff's office. Her testimony was vital to the case because it proved that Camoscio never interfered with the sale of the property to her from Conway. Since this was a central issue of this case for the jury to decide, then Petitioner Camoscio was never given a fair trial because he was denied the right to produce a witness who could prove that Camoscio never had interfered with the contractual agreement with the Mendoncas to buy the

property. See Judge Mather's instructions to the jury, page 104 volume III of the Transcript.

Judge Mathers also interfered with Camoscio's right to produce favorable evidence. Camoscio had subpoenaed in the Conways' tax returns proving or disproving claims made by Conway concerning repairs, interest paid, rents collected, and capital gains tax paid for sale of property. Judge Mathers refused Camoscio the right to examine these documents that were subpoenaed which would have proved that the Conways' claim to the court was false.

See page 148 volume II of Transcript. Judge Mathers placed into evidence John Conway's subpoena, exhibit 19, because Camoscio objected to the judge not allowing him to examine and place into evidence these tax returns which would have proved that Columbia Management

Company and not the Conways paid the mortgage on the property, thus raising the legal issue whether Columbia Management Company should have been the Respondent in this case.

The transcript does not accurately reflect the trial. John Conway when testifying was instructed by Judge Mathers to bring his tax returns back to court after the lunch hour. This part of the transcript is missing from volume II. The reason this section was removed was because it mitigated the judge's violation of Camoscio's right to produce favorable proofs that Conway lied concerning repairs and lost profit on the property. These tax returns proved that Conway made false claims to this court.

Patricia Conway was subpoenaed but failed to appear. She signed the verified complaint that Camoscio inten-

tionally spread false malicious statements, therefore, Camoscio wanted to face his accuser. Judge Mathers stated that her testimony was not necessary. In fact, Judge Mathers would not allow Camoscio the right to present his case until he discussed with the judge what every witness would testify on. The judge then would decide what witnesses would testify and what they would be allowed to testify on. Mr. Sullivan who represented the Respondent was not treated in this manner. See Transcript volume III, pages 1-34. This violated Article XII of the state constitution, First and Fourteenth Amendment of the United States Constitution, and Canon 3A.

Judge Mathers had no right to have Attorney Sullivan present when he forced Camoscio under the threat of not allowing him to present his case unless

the judge approved what each witness would testify about. Judge Mathers violated Camoscio's right to present his own favorable arguments and proofs. If Judge Mathers wants to fight Camoscio's case his way, then he should also pay for the loss.

Judge Mathers also stopped Camoscio from cross-examining witnesses concerning alleged bills for work claimed to have been done on the property. In fact, Judge Mathers threatened to hold Camoscio in contempt of court for questioning a witness on these alleged repairs for which he was being sued. See volume II page 88 lines 11-25 and page 90 lines 1-13 of Transcript. Because Camoscio continued to press on trying to discover the truth, Judge Mathers ccnstantly excluded many of Camoscio's questions which dealt with verifying and proving the alleged

losses claimed by the Conways. Judge Mathers finally held Camoscio in contempt of court because he asked John Conway about the title of the property. This was the central issue of the case for the jury to decide. See volume II page 123 lines 1-11 of Transcript. Mr. Sullivan, Conway's attorney, questioned his witness Gregory A. Brilhante on the clouded title of the property in question and was not held in contempt of court. See volume II page 9 lines 3-18 of Transcript. In fact, Sullivan even questioned John Conway about the problem with the property. See volume II page 106 lines 5-25 of Transcript.

Camoscio was denied the right to question the witnesses who were presented by the Respondents on the central issues of the case. These issues being: (1) Did Richard Hall have a right to sell the property to the Conways in the

first place ? (2) Did Richard Hall commit fraud in obtaining the title of the property which would legally nullify the sale ? (3) Did Richard Hall and William Flynn break court orders by selling the property ? (4) Did a probate court order exist conveying the property to Richard Hall ? and (5) Did Camoscio seek nothing more than the property he was cheated out of by Richard Hall, Carolyn St. Pierre, and William Flynn ? These were the real issues and arguments that Camoscio intended to present as his case. Judge Mathers denied him the right to question William Flynn on the breaking of restraining orders preventing the sale of the property. Judge Mathers also denied Camoscio the right to question Flynn on his participation in altering a purchase and sales agreement concerning Camoscio and Boston Municipal

Court. He denied Camoscio the right to put on the stand Postmaster Donald Clockadile of Pembroke which would have proven that Richard Hall stole Frances Hall's mail in order to receive favorable decisions in Probate Court. Private Detective Andrew J. Palermo was also scheduled to testify to show that Richard Hall was living with Carolyn St. Pierre who was the attorney who represented Frances Hall in divorce proceedings against her husband Richard.

Camoscio also subpoenaed in Judge Lawton to testify on his knowledge concerning the divorce in Probate Court and whether he was aware that William Flynn had committed fraud upon Probate Court concerning the selling of the property and distribution of assets.

Carolyn St. Pierre and Richard

Hall were served in order to explain their participation in a fraudulent scheme to cheat Camoscio. No money was ever returned by these two people, therefore, they were bound to appear in court and testify.

Camoscio cites the following cases: Jeffries v. Georgia Residential Finance Authority, 503 F. Supp. 610, adhered to 90 F.R.D. 62, affirmed 678 F. 2d 919, certiorari denied 103 S. Ct. 302, "In almost every setting where important decisions turn on questions of fact, due process requires opportunity to confront and cross-examine adverse witnesses. U.S.C.A. Const. Amend. 14". and Jackson Waterworks, Inc. v. Public Utilities Com'n of State of Cal., 793 F. 2d 1090, certiorari denied 107 S. Ct. 1334, 94 L. Ed. 2d 184, "Due process clause guarantees aggrieved party opportunity to present case and have its

merits fairly judged.

U.S.C.A. Const. Amend. 14".

F. THE PETITIONERS' RIGHT OF REDRESS WAS VIOLATED WHEN THE COURT FAILED TO GIVE HIM AN ACCURATE TRANSCRIPT.

Camoscio contends that the transcript was deliberately censored by Judge Mathers because he knew that the Appeals Court would grant Camoscio a new trial if the record reflected statements made by the judge on the first day when he stated: "I heard about your antics. I don't like you. I don't trust you. You're a liar". The fact that the judge made these statements and never had met Camoscio, he should have recused himself because he was preconceived. Camoscio requested an immediate mistrial and asked the judge to step down. Judge Mathers denied Camoscio's request. Camoscio then inquired if the side bar was recorded. Judge Mathers stated that these remarks

would appear on the record. They did not. See volume I of the Transcript. Camoscio mentioned this episode in volume III page 13 and was threatened with being locked up. This proves that the incident took place and that Judge Mathers has tampered with the evidence.

Camoscio filed a motion to either correct the transcript or obtain the stenographer's tapes to correct the record. This motion was denied.

Under the Rules of Evidence, Rule 1004 (1), the Court must find in Camoscio's favor.

G. THE PETITIONER STATES THAT THE VERDICT IS CONTRARY TO STATE COURT DECISIONS CONCERNING A PARTIES DUTY TO MITIGATE DAMAGES.

Camoscio states that the Respondents caused the alleged damage by refusing to loan the Mendoncas the money as previously promised. The Respondents in their complaint alleged that Camoscio's statement interfered with the sale of the property by causing the mortgage company to rescind its offer to loan the money. During the trial John Conway testified that he owned the mortgage company in question which rescinded the offer to loan the Mendoncas the money. As a matter of law a party has a duty to mitigate damages. This testimony can be found in volume II of the Transcript, pages 137-138. The Petitioner cites the

following cases: QUARANTO v. SILVERMAN, 345 Mass. 423, 428, 187 N.E. 2d 859, 863 (1963).

10. Damages 62(1)

"A party claiming injury by tort has a duty to use reasonable means to minimize his damages". And Brian et al. v. B. SOPKIN & SONS, Inc., 49 N.E. 2d 863.

7. Damages 62(1)

"A party injured by a tort has duty to use reasonable care to minimize damages".

In summary if Conway did not withdraw his offer to loan the Mendoncas the money as stated under oath then the Mendoncas would have bought the property. All damages were created solely by the Respondents.

CONCLUSION

Camoscio has demonstrated that the trial was a sham. Judge Mathers should have recused himself from the outset but instead conducted a trial in which he denied Camoscio to cross-examine witnesses on the same material that the Respondents had presented. He denied Camoscio the right to present favorable witnesses, proofs, and evidence. Because Camoscio did not obtain due process, he is entitled to a new trial to settle these issues.

Judge Mathers knew he violated Camoscio's constitutional rights when on the first day he made his outlandish statements. Judge Mathers compounded his error when he deleted this judicial blunder from the record. Under the Rules of Evidence, the Appeals Court must find in Camoscio's favor.

I hereby certify that all of the above statements are true and are made under the pains and penalties of perjury.

Respectfully submitted,

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Attorney for Petitioner

DATED: November 25, 1992

92-1118

No. _____

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ON WRIT OF CERTIORARI TO THE

SUPREME COURT OF MASSACHUSETTS

APPENDIX TO

PETITION FOR WRIT OF CERTIORARI

* * * *

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LETTER FROM SUPREME JUDICIAL COURT DENYING PETITION FOR EQUITY TO BE FILED J1-J2

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

CIVIL ACTION

NO. 88-1677

JOHN E. CONWAY ET AL, Plaintiff(s)

vs.

FRANK J. CAMOSCIO ET AL, Defendant(s)

JUDGMENT ON JURY VERDICT

This action came on for trial before the court and a jury, C.A. MATHERS, J. presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

APPENDIX "A"

It is ORDERED and ADJUDGED:

(that the plaintiffs ..JOHN E. &... ..PATRICIA A. CONWAY.. recover of the defendants .FRANK J. CAMOSCIO & FRANCES M. HALL... the sum of $.42,500 00....., with interest thereon from .SEPT. 7, 1988 in the sum of $.12,170.14...as provided by law, and ~~his, her~~, THEIR costs of action.)

(that the plaintiff.....take nothing, that the action be dismissed onthe merits, and that the defendant.... .....recover of the plaintiff..... ....his, her, costs of action.)

Dated at.BROCKTON....,Massachusetts, this ..25th..... day of .JANUARY., 1991.

ASSISTANT CLERK

DOCKETED: FEBRUARY 11, 1991

cc: WLS, ALF, FJC, FMH
2/11/91
k

Form 10 1M-6-85-RP

Signed by: Assistant Clerk,

John B. Deady

Amended Copy

(Above words Amended Copy hand written in by the State's Appeals Court of the Commonwealth of Massachusetts)

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

91-P-797

JOHN E. CONWAY & another[1]

vs.

FRANK J. CAMOSCIO & another[2]

MEMORANDUM AND ORDER UNDER RULE 1:28

The defendants appeal from a Superior Court jury verdict awarding the plaintiffs $42,500 for intentional interference with the plaintiffs' purchase and sale agreement with third parties regarding real estate in Pembroke (the locus).[3] We affirm.

The defendant Hall had refused to assent to a sale of the locus as part

of the division of assets pursuant to a Probate Court divorce judgment (Tr. I:38-39, 41-42, 76; III:53; Exh. at 102, 103). The plaintiffs obtained title to the locus on October 26, 1987, by deed from Hall's husband as approved by the Probate Court (S.A. 4, 8; Exh. at 31, 102-103), with Hall's share of the sale

---

[1] Patricia A. Conway.

[2] Frances M. Hall.

[3] The denial of the defendants' motions for summary judgment brings nothing before this court for review. Deerskin Trading Post, Inc. v. Spencer Press, Inc., 398 Mass. 118, 126 (1986). Although Camoscio purported to appeal from a contempt order and the denial of his motion for a new trial (A. 705), he has not briefed these issues and we deem them to be waived. Mass.R.A.P. 16(a)(4), as amended, 367 Mass. 921 (1975). See

Fergione v. Minuteman Regional Vocational Technical Sch. Dist., 396 Mass. 1015, 1015 n.4 (1986).

---

proceeds being deposited into court (A. 761-762; Tr. I:41-42).

The gist of the plaintiffs' complaint in the present action was that the defendants, acting in bad faith, insisted that the defendant Camoscio owned title to the locus when they knew otherwise, and acted in furtherance of Camoscio's litigation against the plaintiffs whereby he asserted his claim of title. [4] The defendant Hall continued to claim that she had conveyed title to her interest in the locus to Camoscio (A. 342) without evidence of any recorded instrument of conveyance (Tr. I:39-40).

1. Camoscio's appeal. We find no merit in the claim of privilege. The

jury properly could have found Camoscio's litigation against the plaintiffs wrongful in that Camoscio "[did] not have probable cause to believe the suit [would] succeed, and [was] acting primarily for a purpose other than that of properly adjudicating his claims." G.S. Enterprises, Inc. v. Falmouth Marine, Inc., 410 Mass. 262, 273, 274-275 (1991). At the very least, the jury would have been warranted in finding that Camoscio's appeal in that litigation was frivolous, see Camoscio v. Conway, supra note 4 and that the appeal

---

[4] In that case, a Superior Court judge granted summary judgment to the plaintiffs and dismissed Camoscio's complaint on grounds of claim preclusion (S.A. 4, 17-19). On appeal, we summarily affirmed the judgment for

the plaintiffs with double costs and awarded them counsel fees in the amount of $1,000 (S.A. 4, 20-22). Camoscio v. Conway, 26 Mass. App. Ct. 1119 (1988).

---

precipitated the failure of the plaintiffs' agreement to sell (see A. 630-631; Exh. at 12-13). [5]

2. Hall's appeal. For reasons discussed in part 1 of this memorandum, we find that Hall did not establish any privilege. For all that appears, the issue of whether Hall was party to Camoscio's litigation against the plaintiffs was submitted to the jury without objection (Tr. III:114-115). There was evidence to support a finding that she was (Tr. I:43-44; II:105, 111). Apart from that evidence, however, there was evidence that she continued to maintain without support that she had conveyed her interest in the locus to Camoscio

despite adjudications to the contrary. The jury properly could have found that she acted in bad faith.

Finally, the record does not support Hall's argument that she was denied due process because the judge did not afford her the time or opportunity to so appear (Tr. II:169-172; III:21, 28-29, 32-33). Contrast Botsaris v. Botsaris, 26 Mass. App. Ct. 254, 255-257 (1988). Neither her counsel nor Camoscio objected to her absence (Tr. III:76-77, 85). There was no error. See

---

[5] Camoscio claims error in certain comments made by the trial judge during a bench conference (Tr. II:90). The comments were unfortunate and uncalled for, but Camoscio has not demonstrated that the jury was affected or that he suffered any prejudice thereby. Compare

Gleason v. Source Perrier, S.A., 28 Mass. App. Ct. 561, 571-572 & n.17 (1990). See Rosenthal v. Weckstein, 19 Mass. App. Ct. 944, 946-947 (1985).

Homsi v. C.H. Babb Co., 10 Mass. App. Ct. 474, 475-476 (1980).

The plaintiffs have requested an award of counsel fees and costs in connection with this appeal. See Kennedy v. Kennedy, 400 Mass. 272 (1987); Yorke Mgmt. v. Castro, 406 Mass. 17, 19 (1989). See also Olmstead v. Murphy, 21 Mass. App. Ct. 664, 666 (1986). We consider the defendants' appeal to be frivolous. [6] Within thirty days after the issuance of the rescript, see Mass. R.A.P. 23, 367 Mass. 921-922 (1975), the plaintiffs may file with this court a motion for counsel fees and expenses in accordance with the procedure prescribed in Yorke Mgmt. v. Castro, supra

at 20. Upon receipt of these materials, the defendant will be given a reasonable time to respond in writing. Ibid. This court will then establish the amount of appellate counsel fees to be included in the judgment.

Judgment affirmed.

By the Court (Dreben, Fine, & Greenberg, JJ.),

Clerk

Entered: January 31, 1992.

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[6] See Greenberg, Sanctions: In Search of Standards, 74 Mass.L.Rev. 155, 167 (1990).

SUPREME JUDICIAL COURT FOR THE

COMMONWEALTH OF MASSACHUSETTS

1412 Courthouse,

Boston, Massachusetts 02108

(617) 725-8055

TO: Frances M. Hall
58 Mount Vernon Street
Winter Hill MA 02145

RE: Docket No. FAR-06020

JOHN E. CONWAY & another vs. FRANK J. CAMOSCIO & another

NOTICE OF DENIAL OF F.A.R. APPLICATION

Please take note that on February 26, 1992, the above-captioned Application for Further Appellate Review was denied.

APPENDIX "C"

Jean M. Kennett, Clerk

Dated: February 26, 1992

To: Walter L. Sullivan, Esquire
Frank J. Camoscio
Frances M. Hall

APPENDIX "C"

TRIAL COURT OF THE COMMONWEALTH

PLYMOUTH, SS. SUPERIOR COURT DEPARTMENT
CIVIL ACTION
NO. 88-1677-B

JOHN E. CONWAY AND PATRICIA A. CONWAY,

Plaintiff(s)

VS.

FRANK J. CAMOSCIO AND FRANCES M. HALL,

Defendant(s)

ORDER OF NOTICE

April 3, 1992

In the matter of Defendants' motion to set aside Judgment

IT IS ORDERED that the Defendants' give notice to said Plaintiffs' and their Attorney

to appear before our said Court, at the Court House in Brockton, in the Coun-

APPENDIX "D"

ty of Plymouth on Tuesday the Fourteenth day of April A.D. 1992 at 2 o'clock in the P.M., by serving him/her an attested copy of this order and a copy of said Motion, forthwith, that he/she may then and there show cause, if any there be, why said Motion should not be granted.

By the Court,

CLERK

Signed by: Francis R. Powers, Clerk.

4/14/92 (Chernoff, J.) No action taken. These motions have been stricken from the docket per orders of Mathers, R.A.J., issued on 4/7 & 4/14/92.
Attest: John B. Deady, Asst. Clerk

Hand written and signed by Assistant Clerk, John B. Deady on April 14, 1992.

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

CASE NO. A.C.-91-P-797

FRANK J. CAMOSCIO, ET AL.

DEFENDANTS, APPELLANTS,

V.

JOHN E. CONWAY, ET AL.

PLAINTIFFS, APPELLEES.

MOTION TO SET ASIDE APPEALS COURT'S JUDGMENT

The Defendant Frank J. Camoscio moves under the Massachusetts Rules of Appellate Procedure, Rule 2 and Rule 15 that the court consider and act on this motion because Judge Mathers has refused the Defendant the right to file motions as allowed by the Massa-

chusetts Rules of Civil Procedure. Judge Mathers has written a court order removing motions from the records and barring the clerk from accepting any filing unless approved by him. The judge has adopted this policy in order to stop the Defendant from overturning the jury's decision based on the fact that the judge had wrongly instructed the jury and the damages complained about by the Plaintiff were self-created solely for the purpose to sue the Defendants.

The Defendant attaches copies of these motions which he filed or attempted to file with the court. These motions should have been filed and have been part of the lower court record because the Massachusetts Rules of Civil Procedure gives the Defendant this mechanism of redress through Rule 60 and Rule 9. The state legislature, through its wisdom, gave Superior Court

the power to overturn a decision if the moving party can show that judgment violates a principle of law or it was based on some type of fraud. See Massachusetts General Laws chapter 214 § 1.

The Defendant raised the point in his special pleading that the damages sought by the Plaintiff were self-made. The principle of law states that the Plaintiff has a duty to mitigate the damages. Attached to the Plaintiff's motion were two cases citing this rule of law by the Supreme Judicial Court. Also, attached to this special pleading was a copy of the Plaintiff's amended verified complaint. This complaint was attached because the Plaintiff alleges that the Defendants had circulated malicious statements concerning the Plaintiffs' title to the property. The complaint further alleges that this act resulted in the damages to the Plain-

tiff because a potential buyer could not obtain a mortgage. See paragraphs 9 and 11 of this complaint. Also, attached to the special pleadings was an affidavit by attorney Brilhante which stated that the alleged statements were circulated by Conways' agents and not the Defendants. Also, attached were pages from the transcript in which the Plaintiff admitted that it was his company that refused to give the mortgage which resulted in the damage. In conclusion, the Plaintiffs are entitled to no damages because they were self-created.

PRAYERS

1. The Defendant prays that judgment be set aside because the damages were self-created by the Plaintiffs.

I hereby certify that all of the above statements are true and are made under the pains and penalties of perjury.

ATTACHMENTS

1. Special Pleadings and Affidavits which were reviewed by Judge Mathers and denied the Defendant the right to file and argue these points on April 14, 1992.

FRANK J. CAMOSCIO
Pro Se
252 Hanover Street
Boston, Massachusetts 02113
Telephone (617) 720-2849

Signed by: Frank J. Camoscio.

DATED: April 21, 1992.

APPEALS COURT

~~Allowed~~ Denied

Dreben, Fine & Greenberg JJ.

Date: 7-9-92

ATTEST:

Assistant Clerk

Signed by: Assistant Clerk,

Andrew P. Quigley.

CERTIFICATE OF SERVICE

I, Frank J. Camoscio, hereby certify that I have this day served a copy of the within MOTION TO SET ASIDE APPEALS COURT'S JUDGMENT, by mail, postage prepaid, to Walter L. Sullivan, 28 Hazel Avenue, Scituate, MA 02066, and to Frances M. Hall, 58 Mount Vernon Street, Somerville, MA 02145.

Subscribed this 21st day of April 1992, under the pains and penalties of perjury.

FRANK J. CAMOSCIO
Pro Se
252 Hanover Street
Boston, Massachusetts 02113
Telephone (617) 720-2849

DATED: April 21, 1992.

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
NO. CA88-1677

JOHN E. CONWAY AND
PATRICIA A. CONWAY,
Plaintiffs,

vs.

FRANK J. CAMOSCIO AND
FRANCES M. HALL,
Defendants.

SPECIAL PLEADINGS FOR FRAUD

UNDER RULE 9 OF MRCP

The Defendant Frank J. Camoscio asks that judgment be set aside under Rule 9, Rule 60, and MGL chapter 214 § 1 because the Plaintiffs have committed perjury upon the court in or-

der to obtain favorable judgment. The Defendant calls the court's attention to paragraph 9 of the Plaintiffs' Verified Amended Complaint which stated that the Defendants allegedly circulated false and defamatory statements concerning the Plaintiffs' title. The Plaintiff's agent was responsible for the circulation of these statements as proven by the affidavit of Gregory Brilhante. (See attached Affidavit by Gregory A. Brilhante dated February 26, 1990.)

In paragraph 11 of the Plaintiffs' Amended Complaint, the Plaintiff claims that the mortgage lender had refused to loan the Mendoncas money to buy the property because of these alleged statements. During the trial, the Plaintiff admitted that he was the mortgage lender described in paragraph 11 who had refused to give the Mendoncas a loan which

was the basis of his suit against Camoscio. (See attached transcript, pages 137 and 138 of Volume II Transcript of Evidence of Trial.) As a matter of law, the Plaintiff has a duty to mitigate damages. In this case, the plaintiff created the damages in order to sue the Defendants. The Defendant cites the following case: Quaranto v. Silverman, 345 Mass. 423, 428, 187 N.E. 2d 859, 863 (1963).

There is no question that the Plaintiffs had deliberately created the suit in order to abuse the Defendants. The Defendant, therefore, asks that judgment be set aside and damages be awarded to the Defendants for costs because this action is clearly an abuse of process. The Defendant points out that the Plaintiff had deliberately used the courts to extract money from the Defendants of which he was not en-

titled to receive. This case would not have existed if the Plaintiff had loaned the Mendoncas the money which he had refused to do as earlier promised.

PRAYERS

1. The Defendant prays that judgment be set aside and cost be awarded to the Defendant.

I hereby certify that all of the above statements are true and are made under the pains and penalties of perjury.

ATTACHMENTS

1. Amended Verified Complaint by the Plaintiffs.

2. Affidavit by Gregory A. Brilhante dated February 26, 1990.

3. Transcript of Evidence from Trial, pages 137 and 138.

FRANK J. CAMOSCIO
Pro Se
252 Hanover Street
Boston, Massachusetts 02113
Telephone (617) 720-2849

DATED: April 14, 1992.

Signed by: Frank J. Camoscio

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CA NO. 88-1677

JOHN E. CONWAY)
AND PATRICIA A. CONWAY)
PLAINTIFFS)
)
VS.)
)
FRANK J. CAMOSCIO)
AND FRANCES M. HALL)
DEFENDANTS)

AMENDED VERIFIED COMPLAINT

The parties and background

1. The Plaintiffs John E. Conway and Patricia A. Conway ("Conway") have a mailing address of 137 Washington Street, Norwell, MA 02061, and at all times material to the Complaint, were the owners of the real estate known as and numbered 30 Elm Street, Pembroke, MA ("Premises"), as more particularly described in deed dated October 26, 1987, recorded with Plymouth Deeds Book

8091, Page 111, a copy of which Deed is annexed hereto as Exhibit "A".

2. The Defendant Frank J. Camoscio ("Camoscio") resides at 252 Hanover Street, Boston, MA 02113, and was a named purchaser of the Premises in a Purchase and Sale Agreement dated March 11, 1988 ("Purchase Agreement") a copy of which is annexed hereto as Exhibit "B".

3. The Defendant Francis M. Hall, ("Hall") resides at 58 Mt. Vernon Street, Somerville, MA 02145, and is a former owner of the Premises, and a named Purchaser in the Purchase Agreement.

4. Camoscio, pro se, commenced a number of court actions, concerning the Purchase Agreement, one of which was

against Defendant Hall's former husband and joint owner, and which resulted in a judgment that the $1,500 deposit be returned, all as is more particularly indicated by the Findings, Judgment and Clerk's Certificate annexed hereto as Exhibit "C" ("BMC Action").

5. As a result of the BMC Judgment, in the action commenced against Conway by Camoscio, Conway's Motion for Summary Judgment was allowed, as is more particularly indicated in the Judgment annexed hereto as Exhibit "D" ("Plymouth Action") and the Appeals Court affirmation annexed hereto as Exhibit "D-1" ("Affirmation").

6. In connection with Hall's divorce action, the Premises were sold to Plaintiffs and Hall's share of the sale proceeds ($48,223.94) was deposited

in the Plymouth County Probate Court, as more particularly appears from the Order to Distribute Funds and Stipulation of Parties, copies of which are annexed hereto as Exhibit "E" ("Probate Action").

7. In connection with the BMC Action, Camoscio was represented by Attorney Paul Machado. In connection with the Probate Judgment, Hall was represented by the same Attorney.

Count I

Interference with Contractual Relationship

8. After Plaintiffs had purchased the premises, for $164,500, and expended $27,000.00 for repairs and improvements, and entered into a Purchase and Sale Agreement to sell the Premises, Camoscio commenced the Plymouth Action, seeking

among other things, to specifically enforce the Purchase Agreement, notwithstanding the BMC action, (Exhibit "C").

9. After the Plaintiffs had purchased the premises, as indicated in allegation 8 above, knowing full well of the purchase by, and financial commitments of, Plaintiffs, Defendants, acting individually and in combination, unlawfully and maliciously published and circulated false and defamatory statements concerning Plaintiffs' title to the Premises, claiming that the Purchase Agreement (Exhibit "B") was in full force and effect, knowing full well that said Purchase Agreement was a nullity as a result of the BMC Action (Exhibit "C").

10. As a result of these unlawful and malicious statements, Camoscio

and Hall, individually and collectively, have interfered with an advantageous sale to Mr. & Mrs. Paul Mendonca ("Mendonca") as indicated in the Sale Agreement, a copy of which is annexed hereto as Exhibit "F". Pursuant to said Agreement Plaintiffs would have received net proceeds on March 25, 1988 of $211,500, at a time when Plaintiffs' total investment was $191,500.

11. Mendonca's mortgage lender, having learned of Defendant's claims, refused to fund the purchase, and Mendonca terminated the sale agreement, causing Plaintiffs to incur additional carrying costs of approximately $40,000 until a sale of the premises on December 28, 1989 for net proceeds of approximately $200,000. Consequently, the Plaintiffs' adjusted net loss from the ultimate sale was approximately $50,000

and lost profit from the Mendoca sale was approximately $18,000 for a total loss of $68,000.

12. On information and belief the $48,223.94 deposited in the Plymouth County Probate Court for the benefit of Hall, in connection with Plaintiffs' purchase, remains on deposit with said Court, together with interested accumulations.

WHEREFORE, the Plaintiffs pray:

1. That the Court issue a temporary restraining order, restraining the Defendant Frances M. Hall from applying for or receiving the funds on deposit with the Plymouth County Probate Court, Case No. 85D 0970-D1.

2. That the Court issue a permanent injunction restraining the Defendant Frances M. Hall from applying for or receiving the funds on deposit with the Plymouth Probate Court Case No. 85D-0870-D1.

3. That the Court issue a permanent injunction restraining the Defendant Frances M. Hall from publishing and circulating statements denying Plaintiffs' title to the Premises at 30 Elm Street, Pembroke, MA.

4. That the Court issue a permanent injunction restraining the Defendant Frank J. Camoscio from publishing and circulating statements denying Plaintiffs' title to the Premises at 30 Elm Street, Pembroke, MA.

5. That a hearing be held in or-

der to determine the $68,000 of money damages sustained by the Plaintiffs as a result of the conduct of the Defendants.

6. That the Plaintiffs be allowed their costs and expenses, including Attorneys' fees and for such other and further relief as the circumstances may require.

The Plaintiffs John E. Conway and Patricia A. Conway, being duly sworn, on oath depose and say that we are the Plaintiffs in the within action, that we have read the amended Complaint and know the contents thereof to be true, except as to those matters therein stated on information and belief, as to which we believe the same to be true.

John E. Conway

Patricia A. Conway

Signed by: John E. Conway and Patricia A. Conway.

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

CIVIL ACTION NO. 88-1677

JOHN E. CONWAY ET AL)
PLAINTIFFS)
)
VS.)
)
FRANK J. CAMOSCIO ET AL)
DEFENDANTS)
)

AFFIDAVIT IN SUPPORT OF

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Now comes Gregory A. Brilhante, an attorney with offices at 321 N. Main Street, Box 2568, Fall River, MA, and on oath do depose and say as follows:

1. I represented Paul D. Mendonca and Mary Ann Mendonca (collectively "Mendonca") in connection with their efforts to purchase the premises at 30 Elm

Street, Pembroke, MA ("Premises").

2. In connection with said representation, I am aware that the Mendoncas were prepared to close on the transaction on March 25, 1988 at a price of $218,000 in accordance with the terms and conditions of the March 2, 1988 purchase and sale agreement, a copy of which is annexed hereto as Exhibit A.

3. On or about March 18, 1988, I was advised by the attorney for the mortgage lender of the action commenced by Frank J. Camoscio ("CA88-0482"). After consultation with the Mendoncas and further conferences with the Bank attorney indicating that title insurance with affirmative assurance was not available, the closing date was extended for 30 days in order to "clear title". During the extension period, I inquired from

time to time of the Sellers' trial counsel to determine the status of the litigation and he provided me with copies of the pleadings, motions and affidavits on file at the Court.

4. By document dated May 9, 1988 the closing date was extended in connection with a use and occupation agreement through November 8, 1988, "to clear title" with the right reserved in Mendonca to extent the same. From time to time thereafter, I conferred with, and reviewed the materials submitted by, Sellers' trial counsel.

5. On or about October 6, 1988, Camoscio having taken an appeal to the Appeals Court, Mendonca gave notice of their intention to terminate the Purchase and Sale and Use and Occupation Agreement. Consistent with said notice,

the Mendoncas vacated the premises and made other arrangements for their housing requirements.

6. Based upon a review of the file the Mendoncas were ready, willing and able to purchase the premises at the contract price of $218,000 on March 25, 1988 and I have reason to believe that they continued to be so ready, willing and able through the date of their notice of termination, if CA88-0482 had been finally disposed of, to the satisfaction of the title insuror and the mortgagee bank.

Signed under the pains and penalties of perjury this 26th day of February, 1990.

_____

Gregory A. Brilhante

Before me

_____

Notary Public Catherine P. Fox

My Commission Expires: 5/8/92

Signed by: Gregory A. Brilhante and

Catherine P. Fox

Q That is your Complaint, isn't it, sir?

A I haven't read it yet.

(Whereupon, the witness perused the document.)

A It's my signature at the end, yes, it's mine.

Q Weren't both these documents sworn to?

A Yes.

Q Then why did the altered purchase and sale agreement with Camoscio, dated 3-11-86, contain both Frances and Robert and Richard Hall's signature?

MR. SULLIVAN: Object.

THE COURT: Excluded.

Q According to paragraph 11 of this sworn statement, you refer to the Mendoncas hav-

ing trouble getting
a loan from their mortgage lender since Camoscio filed suit against you, is that true?

A Wait 'til I read paragraph 11 and I'll comment.

(Whereupon, the witness perused the document.)

A That is true.

Q Was it Northern Mortgage Company the lender referred to in this paragraph?

A To the best of my recollection, it was.

Q Aren't you Northern Mortgage Company?

A I am. Well, I am a stockholder in Northern Mortgage Company.

Q Are there any other stockholders?

A Yes.

Q How many?

A Three.

Q Who are they?

MR. SULLIVAN: Object.

THE COURT: Excluded.

Q Are you Chairman of the Board of that company?

A Yes.

Q Mr. Conway, then why would you not want to loan the money to Mendonca if you knew there were no problems with the title?

MR. SULLIVAN: Object.

THE COURT: Excluded.

Q Are you familiar with this purchase and sale agreement, sir?

A I'm familiar with the form. It's a purchase and

sale agreement of Hall to Babbitt. dated June 29, 1987

Q I'm just asking if you are familiar with it?

A The answer is yes.

Q Okay. Isn't it true that you had to wait until Babbitt signed a release form on August the 21st before you could enter into a purchase and sale agreement with Richard Hall?

THE COURT: Excluded.

CERTIFICATE OF SERVICE

I, Frank J. Camoscio, Defendant, hereby certify that on this 14th day of April, 1992, I mailed, postage prepaid, SPECIAL PLEADINGS FOR FRAUD UNDER RULE 9 OF MRCP, to Walter L. Sullivan, Attorney for Plaintiffs, 28 Hazel Avenue, Scituate, MA 02066, and to Frances M. Hall, 58 Mount Vernon Street, Somerville, MA 02145.

Subscribed this 14th day of April 1992, under the pains and penalties of perjury.

FRANK J. CAMOSCIO
Pro Se
252 Hanover Street
Boston, Massachusetts 02113
Telephone (617) 720-2849

Signed by: Frank J. Camoscio

QUARANTO v. SILVERMAN

Cite as 187 N.E.2d 859

John J. QUARANTO et al.

v.

Samuel SILVERMAN.

Supreme Judicial Court

of Massachusetts.

Suffolk.

Argued Oct. 4, 1962.

Decided Feb. 7, 1963.

10. Damages ⚷62(1)

A party claiming injury by tort has a duty to use reasonable means to minimize his damages.

Loker v. Damon, 17 Pick. 284, 288. Brian v. B. Sopkin & Sons, Inc., 314 Mass. 180, 183, 49 N.E.2d 894, and cases cited.

A party claiming injury by a tort has a duty to use reasonable means to minimize his damages.

BRIAN et al. v. B. SOPKIN & SONS, Inc.

49 NORTH EASTERN REPORTER, 2d SERIES

Supreme Judicial Court of Massachusetts.

Bristol.

June 28, 1943.

7. Damages ⚷ 62(1)

A party injured by a tort has duty to use reasonable care to minimize damages.

[7,8] A party injured by a tort has a duty to use reasonable care to minimize the damages. Loker v. Damon, 17 Pick. 284, 288; Eastman v. Sanborn, 3 Allen 594, 81 Am.Dec. 677; Atwood v. Boston Forwarding & Transfer Co., 185 Mass. 557, 71 N.E. 72; Ingraham v. Pullman Co., 190 Mass. 33, 76 N.E. 237; Sullivan v. Old Colony Street Railway, 200 Mass. 303, 309, 86 N.E. 511; Fairfield v. Salem, 213 Mass. 296, 100 N.E. 542; Gray v. Boston Elevated Railway, 215 Mass. 143, 147, 102 N.E. 71.

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
NO. CA88-1677

JOHN E. CONWAY AND PATRICIA A. CONWAY, Plaintiffs,	)
vs.	)
FRANK J. CAMOSCIO AND FRANCES M. HALL, Defendants.	)

AFFIDAVIT

I, Frank J. Camoscio, hereby depose and swear to the following facts which document events and actions by parties to this case who have committed fraud upon the court. Because Case findings have been based upon fraud and deceit, and because the proofs of fraud and deceit

are a matter of record; all court decisions subsequent to the frauds are null and void as a matter of law.

In the matter before the court, as the court of original jurisdiction, the existence of fraud and conspiracy to commit fraud is clearly demonstrated.

Camoscio agreed to purchase the subject real estate from Richard Hall and Frances Hall. The Halls were instructed to sell the property by Probate Court.

A valid purchase and sale agreement was executed by Camoscio, Hall. and Hall. A deposit was given to Mr. Hall and full payment was made to Mrs. Hall. This sale occurred before the Hall's divorce nici.

Mrs. Hall was represented by Atty. St. Pierre: but Mrs. Hall did not know at

this time that Mr. Hall and St. Pierre had a private relationship.

Richard Hall, with his Atty. Flynn and Atty. St. Pierre altered the original purchase and sale. See judgment by Boston Municipal Court in Camoscio's favor, finding that the original purchase and sale agreement was altered.

With the altered document, however, Richard Hall proceeded illegally to sell the property to Conway in October of 1987. Atty. Flynn participated in this illegal sale knowing full well that his client had altered a prior agreement.

Camoscio attempted to protect his prior status and ownership of the property before Judge George Sullivan in Superior Court in November of 1987.

In that hearing and under oath, Atty. Flynn lied to the court. Richard Hall lied to the court. They both stated to Judge Sullivan that the property had not been sold, knowing that they both had participated in an illegal transaction to sell the property in the previous month.

Judge Sullivan took their word, and issued a restraining order prohibiting the sale.

Ten days later, Flynn and Hall again appeared before Judge Sullivan and repeated their lies, stating that the property had not been sold.

Judge Sullivan then ordered a preliminary injunction prohibiting the sale of the property. Judge Sullivan instructed Atty. Flynn and Camoscio to submit a

copy of the injunction to Judge Lawton sitting in Probate Court. Said injunction was served in hand.

Sullivan also instructed Flynn and Camoscio to file a copy of his order to be attached to the property title in the Registry of Deeds. This copy of the order was duly filed.

One week later, Judge Lawton -- at the request of atty. Flynn -- divided the Hall's assets of the marital home in defiance of Judge Sullivan's Order.

Camoscio sued Conway to claim his rightful ownership. Judge Steadman dismissed the case due to claims preclusion, stating that the case should have been heard in original action, either in Boston Municipal Court or Probate.

Conway then sued Camoscio for contract interference, using the legal terminology "Just Libel". The Law requires, however, that Camoscio's statements be proven false -- which is not the case -- and that Conway be the rightful owner -- which is also not the case.

At a pre-trial hearing before Judge Steadman on the Conway matter, the case was sent immediately to Judge Mathers for trial. No pre-trial hearing was held.

Within minutes, in front of Judge Mathers, the case was scheduled for trial. This was on a thursday, and the case was scheduled for the following tuesday, and the Monday was a holiday.

With only one court day to prepare, Camoscio was denied the right to sub-

poena witnesses. Further, he was blatantly denied the right to prove that subpoenas were served in hand. No right of discovery was allowed and no depositions could be taken.

On the trial day, Judge Mathers stated to Camoscio "I've heard of you. I don't like you. I don't trust you. You're a liar".

Camoscio appeared Pro Se, and Mathers denied him proper due process. Mathers demanded that Camoscio submit all questions to witnesses in writing in advance. Mathers promised to enforce subpoenas, but failed to do so.

Mathers refused to allow Camoscio to enter evidence of the bill of sale and of the fraud. Camoscio was held in contempt for mentioning the fraud, but the

contempt was deleted from the record.

Camoscio was denied the right to face his accusers, right to depositions, and all discovery. (Time for depositions was limited to one hour; witnesses took up the hour in meaningless responses.)

After manipulating the trial in further evidence of his bias against Camoscio, Judge Mathers wrongly instructed the jury.

1. Judge Mathers stated that Camoscio got back his money from Mr. Hall and that was the end of Mr. Camoscio claim for the property and that he was, therefore precluded. Page 102 volume III. Camoscio never paid, and Mathers knew this to be the case.

2. On page 100 lines 17-22 of the transcript, Judge Mathers tells jury that Camoscio and Hall were planning to purchase property from Hall's husband. Yet the truth is that Camoscio entered into a Purchase and Sales Agreement with both Halls and had paid for Frances Hall's half in full.

3. Page 100 lines 23-25 and page 101 lines 1-7 Judge states Camoscio only wanted money back in Boston Municipal Court, yet Mathers knew that the Truth is that Camoscio filed Motion to Amend complaint to enforce Purchase and Sales agreement but Boston Municipal Court lacked jurisdiction and told

Camoscio to file a Complaint in Equity for Fraud and Deceit in Superior Court upon winning and file a copy of this complaint in Probate Court.

Finally, Mathers openly lied to the jury on a fundamental point when the jury asked a major question during deliberation: "was Mrs. Hall part of the original court action in Camoscio v. Conway". Even when Camoscio objected, and even though case documents proved otherwise, Mathers insisted the jury be told a lie -- and stated that Mrs. Hall was part of Camoscio's original case against Conway, thereby asserting Hall and Camoscio were in collusion.

Since the Mathers trial was mishandled, Motions to Address fraud upon the court by both Camoscio and Mrs. Hall have

been filed, and obstructed.

Nowhere has this issue of fraud been addressed.

Finally, Probate Court ruled that Camoscio is the rightful owner which makes Conway's suit null and void. (See Judge Asack's Court Order)

Further, Camoscio's motion to prosecute the perpetrators for fraud upon the court has been granted, because the proofs and documentation are available to the court.

In the simple attempt to seek justice and to protect the original transaction, Camoscio has been subjected to wide-spread abuse. Mrs. Hall, who has acted only to keep her word and to uphold the original transaction, has only been

abused.

Throughout the entangled proceedings, a thread of abuse of power, complicity with the fraud, and cover-up of illegal acts has been woven by the court system and its beaurocracy.

Mrs. Hall's Atty. St. Pierre -- during the Hall divorce proceeding -- encouraged Mrs. Hall to leave the Marital home "for fear of her life", and to leave behind her personal belongings. St. Pierre, meanwhile, moved in with Mr. Hall (and subsequently married him), was found guilty of embezzlement in an unrelated matter (but held Camoscio responsible for not lying for her), participated with Mr. Hall and Flynn in altering the original purchase and sale agreement (and refused to comply with the Boston Municipal Court judgment),

and encouraged Mr. Hall to cooperate with Conway and his Atty. Walter Sullivan in their attempts to perfect the illegal second sale of the property.

Atty. Flynn and Mr. Hall were confronted with their fraud before Judge Lawton, in Probate Court. Rather than be held in Contempt by Judge Lawton, Flynn and Hall agreed to a trial in front of Judge Byron in Superior Court for Fraud and Deceit upon the Probate Court. Judge Byron demanded a trial by jury. (Flynn found it necessary to be represented, himself, at this hearing and brought in Senator Creedon.)

Judge Lawton granted title to the property to the Conways and persistently refused to honor all claims by Mrs. Hall and by Dr. Camoscio.

Lawton even went so far as to name a guardian ad litem for Mrs. Hall so he could over-ride her objections to the fraud. And when it was proven that the guardian was illegally imposed, Lawton still paid the guardian out of Mrs. Hall's funds.

Lawton committed fraud by his own actions when he knowingly defied Judge Sullivan's restraining order and protected Flynn, Hall, and Conway from prosecution.

All of these statements are true. The pattern of acts and the chain of events are a matter of record. Each and every statement made herein has been proved beyond doubt.

And the Abuse continues.

A. Judge Asack ruled on March 31, 1992 that Camoscio was rightful owner of the property and Camoscio should receive the property based on Original Purchase and Sale Agreement.

Judge Asack knew, during the hearings, that Boston Municipal Court ruled Richard Hall committed fraud and altered Purchase and Sale agreement.

B. A New Order by Judge Asack indicates this original order was "denied" but fails to give any reason for the mysterious reversal.

1. Judge Asack could not have reversed this order unless someone brought it to his

attention with illegal pressure, proving that the original order should stand since Asack acted outside the scope of his authority.

2. Camoscio appeared in Plymouth Superior Court on April 3, 1992 and received the allowed orders in hand. The same day, the motions which were allowed on March 31, 1992 were later marked "denied" on April 3, 1992.

3. The motion was denied concerning Protective Order, yet Judges note states just the opposite. Also, when the Judge denied a motion its printed not written and the hand writing does not

appear to be the same.
(Refer to letter D and
how letter i are dotted.)

Judge Asack intended to allow the Motion for protective order, which is clear from his instructional paragraph at the bottom of the motion, in the judges handwriting.

When someone in the judicial bureaucracy saw fit to alter this decision, they were too dumb to erase the judges instructional paragraph.

Clearly his order to allow the motion should stand. If the opposition succeeds in this further manipulation, the central issue of fraud will only await appeals to be resolved.

C. The Court cannot act one way

or the other until an evidentuary hearing is heard to resolve these issues.

SUMMARY

Judgment should be set aside and a new trial be granted so the jury can decide these issues.

A. Judge Lawton was subpoenaed to appear before the jury but chose Elective Surgery to avoid telling the truth concerning his wrong doing in the property.

B. Judge Mathers denied me the right to present anything concerning the fraud involved in the property.

C. Judge Mathers wrongly instructed the jury, as noted above.

Court lacks jurisdiction to award judgment because Amended Verified Complaint is a perjured document.

A. Perjury is that the Plaintiffs stated that the Defendants diseminated libelous and false statements concerning the property which interfered with the sale.

1. Testimony proved it was John Conway's agents that circulated the statements.

B. If perjury exists in the Complaint the Court lacks jurisdiction to offer them any money.

I hereby certify that all of the above statements are true and are made under the pains and penalties of perjury.

_____

FRANK J. CAMOSCIO
Pro Se
252 Hanover Street
Boston, Massachusetts 02113
Telephone (617) 720-2849

DATED: April 14, 1992.

Signed by: Frank J. Camoscio.

Domenic Bruno
NOTARY PUBLIC
My Commission Expires May 29. 1992

4/14/92

Notary Public signed by: Domenic Bruno.

CERTIFICATE OF SERVICE

I, Frank J. Camoscio, hereby certify that I have this day served a copy of the within AFFIDAVIT, by hand, to Walter L. Sullivan of 28 Hazel Avenue, Scituate, MA 02066, and to Frances M. Hall, 58 Mount Vernon Street, Somerville, MA 02145.

Subscribed this 14th day of April 1992, under the pains and penalties of perjury.

FRANK J. CAMOSCIO
Pro Se
252 Hanover Street
Boston, Massachusetts 02113
Telephone (617) 720-2849

DATED: April 14, 1992.

Signed by: Frank J. Camoscio

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss. SUPERIOR COURT
No. 88-1677

JOHN E. CONWAY AND
PATRICIA A. CONWAY,
Plaintiff,

vs.

FRANK J. CAMOSCIO AND
FRANCES M. HALL,
Defendants.

SPECIAL PLEADING UNDER RULE 9

Both fraud 9(b) and intentionally biased judgement 9(e) exists in this case.

Defendant therefore denies the authority of this court to assess damages or to enforce its flawed order for the plaintiff.

Defendant demands review and re-trial before an impartial court to remedy the effect which the fraudulent acts inflicted by plaintiff and to counter-act judicial malice.

The plaintiff and his representatives lied and continue to lie to perpetrate and protect the fraud.

SPECIFICATIONS

In a divorce action, Probate Court ordered Frances Hall and Richard Hall to sell their residential real estate.

The Halls -- with Mr. Hall's attorney Flynn -- and Dr. Frank J. Camoscio executed a purchase and sale agreement to sell both halves of the real property to Camoscio; taking a deposit from Dr.

Camoscio and, subsequently, Mrs. Hall accepted full payment for her half of the property and executed a bill of sale to Dr. Camoscio.

Within the same week, Atty. Flynn signed another purchase and sale agreement for the same property to the Dwyers, knowing that he was committing fraud. This purchase and sale agreement is part of the Probate Court records.

With the help of Mrs. Hall's attorney -- Carolyn St. Pierre -- Richard Hall altered his copy of the purchase and sale agreement. Atty. St. Pierre moved in with Mr. Hall and later married him while still claiming to represent Mrs. Hall.

Eventually, Richard Hall used the attered purchase and sale agreement to

sell the entire property through the Conway agency.

Meanwhile, Boston Municipal Court decision affirmed that the purchase and sale agreement to Camoscio had been tampered with by Mr. Hall. Judge Byron ordered that Hall be brought to trial; to date the court has conveniently overlooked this order.

During the Probate proceedings, it was found that Hall used an unlicensed firearm to threaten Mrs. Hall. No action under the mandatory gun law was taken against Hall; in fact the gun was returned to him by the Pembroke police.

Then Hall and St. Pierre, with the protective representation of State Representative Flynn, conspired to sell the property with agent Conway. The sale

took place on October 27, 1987.

In the meantime, action was taken by the original buyer to safeguard the property. There was a restraining order issued by Judge George Sullivan in Plymouth Superior Court preventing the sale. Judge Sullivan sent Camoscio and Flynn to deliver the restraining order to the Registry of Deeds and to Probate Court where Judge Lawton accepted it in hand. Hence, on November 3, 1987, Flynn swore before Judge George Sullivan that the property had not been sold. He lied, knowing the sale was illegal.

On November 13, again Camoscio, Flynn and Hall appeared before Judge Sullivan. Flynn and Hall Swore that the property had not been sold and that the status was the same. Flynn and Hall both well knew that the property had been sold on

October 27 and that the deed was turned over to Conway as owner, not merely as agent.

Then Conway brought Camoscio into court saying that Camoscio prevented the sale to Conway's client the Mendoncas. Conway claimed they were prevented from getting a mortgage because of Camoscio's claim. However, the Mendoncas were seeking funds from a Mortgage Company owned by Conway, and since Conway knew of the fraud, his claim has no merit.

When Conway's claim went to court, further fraud was committed by Justice Mathers who was obligated to protect Judge Lawton and Atty. Flynn. There is no question that Judge Lawton lied to protect the fraud. There is no question that Flynn lied to further the fraud.

Justice Mathers refused to even consider Camoscio's evidence; and he made prejudical statements about Camoscio. Mathers erred -- and intentionally abused his powers -- by refusing to allow evidence of a valid bill of sale to Camoscio, by refusing to allow a court decision that proved Hall and St. Pierre had altered the original purchase and sale agreement, even refused to allow Camoscio to mention any of the parties against him, refused to enforce subpoenas, and, when challenged for his admitted bias, he refused to step down. He held Camoscio in contempt; yet has never addressed the issue, and had the action stricken from the record. Mathers threatened Camoscio and refused to allow him to ask questions. Mathers knowingly allowed Atty. Sullivan to lie about Mrs. Hall, saying she was party to the suit against Conway when he knew full well

she was not. The case against Conway was brought only by Camoscio and was part of the record in this case.

Mathers charged the jury improperly. He even lied to the jury because he knew that the deposition from Mrs. Conway (who was not allowed to testify) proved Camoscio's case.

By not enforcing the subpoenas after agreeing that he would, Mathers obstructed justice by denying Camoscio's right to present testimony or to directly face the people who brought the charges against Camoscio.

To further insult Camoscio, Mathers ordered that Camoscio pay over 5 times the cost for case transcripts -- Atty. Sullivan paid only $379 and Camoscio was charged an illegal $2,000.00.

During the trial, Mrs. Hall was bedridden for bone graft surgery and ambulance service was scheduled to bring her to court. However, Mathers knowingly terminated the hearing the day before she was scheduled to appear.

Mathers demonstrated during the trial that he knew Flynn and Conway and Sullivan were lying, yet he allowed their statements to become record. He denied Camoscio the right to mention even the most basic facts: that there was a court order preventing the sale, that Flynn lied to Judge Sullivan about the sale, that Lawton willingly conspired to overlook the injunction against the sale.

In preparing for the trial Judge Prince denied Camoscio's right of discovery, and allowed only one hour with the

plaintiffs for depositions. Prince also denied all use of interrogatories. He clearly denied Camoscio's right of due process and equal treatment under the law.

Mrs. Conway's deposition, for example, showed that although she charged slander in her suit, her deposed testimony proved she knew nothing about the claim and knew nothing about any of the charges she made.

Because Judge Mathers later even refused Camoscio's right to question Mrs. Conway about her deposition, he knowingly obstructed justice and allowed the fraud to be concealed from the jury.

Judge Lawton, in an attempt to cover his wrong doing, claimed there was a motion

to claim coercion and threats against Mrs. Hall in the original sale. Lawton later admitted there was no motion yet he created an order to appoint a guardian for Mrs. Hall. Mrs. Hall demonstrated her ability to act for herself, proved there was no such motion and Lawton sidestepped his play. However, he illegally transferred funds to pay his personally appointed "guardian".

INVOCATION

Now Camoscio's funds have been mis-applied and fraudulently converted by Judge Lawton, and transferred by Judge Lawton prior to appeals adjudication in the face of gross judicial misconduct.

I Frank J. Camoscio invoke Rule 9; specifically 9(b) and 9(e) and hereby state

that I unoquivocally refuse to pay the false claims arrived at in and through fraud by the claimants and their man-servants in fraud on the bench, even if it means incarceration to gain an impartial trial.

I refuse to allow funds which I paid in good faith for the property in question to be converted illegally and distributed to claims gained through fraud and deceit.

I refuse to allow judgements by Lawton and Mathers which were obviously and intentionally flawed to my detriment go unchallenged.

In further support of my right of claim, specification, and invocation under Rule 9 (9(b) and 9(e)) I include in the record to be adjudicated at any future

trial resulting from my declared refusals, the following motivation and merits to be impartially heard.

MOTIVATION AND MERITS

It is clear that the motivation for the judicial bias and for the wrong doing in this case centers on Camoscio's branded status in the courts.

There is no doubt that Camoscio is an easy target for anyone who would take advantage of him -- St. Pierre, Hall, Conway, Flynn et al have demonstrated repeatedly that they willingly take advantage of Camoscio's subjugation to "the Irwin Order".

Judges Lawton and Mathers likewise abuse Camoscio and willingly allow the

judicial beaurocracy to deny Camoscio due process and fair treatment.

Yet their motivation is based in communication outside the merits of this case and without judicial knowledge of the merits of earlier cases which led to "The Irwin Order".

Because "The Irwin Order" has been specifically cited in this case, and because the bias has been openly linked to the brand placed on Camoscio, Rule 9 thereby requires a comprehensive review of the Motivation and Merits that operate to deny Camoscio a fair and impartial trial in this case.

In 1965, John E. Powers, then president of the Senate -- before Frank J. Camoscio, Attorney General Edward Brooke and First Assistant Attorney

General Willy Davis -- stated to Camoscio that he (Powers) would "Get even with you, you bastard".

Brooke told Powers that he could never again run for Statewide office and, to escape prosecution before a grand jury for issuing a fraudulent license to Anne Hunnicut to practice podiatric medicine, promised to abide by the agreement.

Since 1965, Powers has made good his threat against Camoscio.

His insidious manipulation of the judicial beaurocracy in his safe role as Chief Clerk has served to punish Camoscio for revealing Power's original crime. As the abuse of Camoscio snowballed, Camoscio became branded as a "kook" and an easy target. The result

is that Camoscio's right to equal access to the courts has been abridged.

When Dr. Camoscio again revealed -- in the Fleming case -- illegal licenses being issued, Camoscio became the target of prosecution. (See Judges decision in Camoscio's favor, case # 99221 Suffolk Superior Court)

A grand jury was called, and even though then Assistant Attorney General Irwin fought against it, 35 indictments were handed down.

However, Attorney General Bellotti squelched the indictments and, to date, they have not been served.

Irwin's reward, of course, was to become Judge Irwin.

Meanwhile, Bellotti and his legal staff fought for 8 years to restore the illegal license to Fleming.

And, with equal vigor, they fought to ruin Camoscio. They, with the complicity of the Board of Registration in Podiatry, brought charges in interlocutory proceedings to deprive Camoscio of his license to practice and his livelihood.

Pursuant to these cases -- and as a matter of record -- Camoscio was physically attacked and his attorney was warned and threatened by Attorney General Bellotti to abandon Camoscio.
(See motion still awaiting action by Justice Joseph Nolan in the Supreme Judicial Court.)

Because those actions were resolved

against Camoscio in interlocutory proceedings which are controlled by the Attorney General and because the Attorney General also represents the Board of Registration, Camoscio's case -- in all its beaurocratic complexity -- has never been heard on its merits in a court of law.

When Camoscio has tried to have individual incidents and his combined case heard, he has been blocked by the beaurocracy. Ultimately, Irwin favored his benefactors by Issuing "the Irwin Order" used to benefit Conway.

Therefore, No action can go forward in the assessment of damages until Rule 9 has been fully satisfied as to The judgemental bias, the fraud, and the motivation behind this case.

I hereby certify that all of the above statements are true and are made under the pains and penalties of perjury.

_____

FRANK J. CAMOSCIO
Pro Se
252 Hanover Street
Boston, Massachusetts 02113
Telephone (617) 720-2849

DATED: April 14, 1992.

Signed by: Frank J. Camoscio.

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
NO. CA88-1677

JOHN E. CONWAY AND)
PATRICIA A. CONWAY,)
Plaintiff,)
)
vs.)
)
FRANK J. CAMOSCIO AND)
FRANCES M. HALL,)
Defendants.)

AFFIDAVIT BY FRANCES HALL

I Frances Hall swear to the following statements.

Before our divorce nici, I and my then husband were instructed by judge Murphy in probate court to sell our Marital home.

I signed and Richard Hall (husband) signed a valid purchase and sale agreement with Dr. Frank Camoscio to sell the property.

Dr. Camoscio paid me in full for my half and I gave him a bill of sale. Dr. Camoscio paid Richard Hall a deposit for his half of the property.

Richard Hall and his Atty. Flynn then altered the purchase and sale agreement so they could sell my home to a real estate speculator, Conway.

The money from Conway, representing my half of this illegal second sale was held by the court and I stated that I could not honestly take money a second time, and that I knew the sale to Conway was fraudulent.

I have since cooperated with Dr. Camoscio to defend his rightful ownership.

It has been difficult enough for me to be attacked by the people committing the fraud to sell the property a second time. But I was even more shocked to experience Judge Lawton's participation in the matter.

He has gone out of his way to protect Flynn and Conway and to deny me my rights.

He even went so far as to try to assign a guardian ad litem to me who could take over and act in my behalf. I successfully prevented him from doing so, but he still misappropriated funds and paid the guardian anyway.

I hereby certify that all of the above statements are true and are made under the pains and penalties of perjury.

FRANCES M. HALL
Pro Se
58 Mount Vernon Street
Somerville, Massachusetts 02145
Telephone (617) 628-1744

DATED: April 14, 1992.

Domenic Bruno
NOTARY PUBLIC
My Commission Expires May 29, 1992

4/14/92

Affidavit signed by: Frances M. Hall.

Notary Public signed by: Domenic Bruno.

CERTIFICATE OF SERVICE

I, Frances M. Hall, hereby certify that I have this day served a copy of the within AFFIDAVIT, by hand, to Walter L. Sullivan of 28 Hazel Avenue, Scituate, MA 02066, and to Frank J. Camoscio, 252 Hanover Street, Boston, MA 02113.

Subscribed this 14th day of April, 1992 under the pains and penalties of perjury.

FRANCES M. HALL
Pro Se
58 Mount Vernon Street
Somerville, Massachusetts 02113
Telephone (617) 628-1744

DATED: April 14, 1992.

Signed by: Frances M. Hall.

MASSACHUSETTS GENERAL LAWS,

CHAPTER 231 § 91.

EFFECT OF UNPROVED DEFENSE OF TRUTH IN ACTION OF SLANDER OR LIBEL; PROOF OF STATEMENTS NOT CONTAINED IN PLEADINGS

In an action of slander or libel, if the defendant alleges that the words spoken or published were true, such allegation, although not supported by the evidence, shall not of itself be proof of the malice alleged in the complaint, nor shall statements of the defendant differing in import from those alleged be admissible to establish his malice unless such statements were published in pursuance of a general scheme to defame or otherwise injure the plaintiff. If the plaintiff proposes to introduce evidence of statements of the defendant

other than those contained in his pleadings, he shall give the defendant written notice of such intention, specifying the date and content of each such statement, at least fourteen days before trial begins, or earlier if the court so orders; and, if any such statement is introduced in evidence, the defendant shall be permitted to prove that it was true, or was privileged, or any other facts relating thereto which tend to negative malice.

Amended by St. 1943, c. 365, § 1; St. 1973, c. 1114, § 192.

RULES OF EVIDENCE

RULE 1004

ADMISSIBILITY OF OTHER EVIDENCE OF CONTENTS

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissable if --

(1) ORIGINALS LOST OR DESTROYED. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith.

CODE OF JUDICIAL CONDUCT

CANON 3 (A)(1)(4)

CANON 3. A JUDGE SHOULD PERFORM THE DUTIES OF HIS OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

(A) ADJUDICATIVE RESPONSIBILITIES.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to

be heard according to law. He should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to be affected thereby are not represented before him, except in cases where provision is made by law for ex parte application.

MASSACHUSETTS GENERAL LAWS

CHAPTER 268 § 1

§ 1. PERJURY

Whoever, being lawfully required to depose the truth in a judicial proceeding or in a proceeding in a course of justice, wilfully swears or affirms falsely in a matter material to the issue or point in question, or whoever, being required by law to take an oath or affirmation, wilfully swears or affirms falsely in a matter relative to which such oath or affirmation is required, shall be guilty of perjury. Whoever commits perjury on the trial of an indictment for a capital crime shall be punished by imprisonment in the state prison for life or for any term of years, and whoever commits perjury in any other case shall be punished by

imprisonment in the state prison for not more than twenty years or by a fine of not more than one thousand dollars or by imprisonment in jail for not more than two and one half years, or by both such fine and imprisonment in jail.

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT OF THE
COMMONWEALTH

CIVIL ACTION
NO. CA87-1908

FRANK J. CAMOSCIO, Plaintiff(s)

vs.

RICHARD HALL, Defendant(s)

SUMMONS AND RESTRAINING ORDER

To the above-named Defendant :

You are hereby summoned and required to serve upon Frank J. Camoscio, plaintiff whose address is 252 Hanover St., Boston, an answer to the complaint which is herewith served upon

you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this Court at PLYMOUTH either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

WE ALSO NOTIFY YOU that application has been made in said action, as appears in the complaint for a preliminary injunction and that a hearing upon such application will be held at the Court House at said PLYMOUTH in the first session without jury of our said Court on ..Friday..... the .....6th..... day of.November., A.D., 1987, at ..9:30.... o'clock A.M., at which you may appear and show cause why such application should not be granted.

In the meantime, until such hearing. WE COMMAND YOU, said defendant.., Richard Hall..... and your agents, attorneys and counsellors, and each and every one of them, to desist and refrain from ..transferring, selling... or otherwise disposing of the property located at 30 Elm Street, Pembroke.....

Witness, THOMAS R. MORSE, JR., Esquire, at Plymouth, the ..fourth..... day of ..November..., in the year of our Lord one thousand nine hundred and eighty-seven.

CLERK.

NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.

2. When more than one defendant is involved, the names of all defendants should appear in the caption.

If a separate summons is used for each defendant, each should be addressed to the particular defendant.

Signed by: Clerk, Francis R. Powers.

Form 4 . 2M.6.78.RP

COMMONWEALTH OF MASSACHUSETTS.

PLYMOUTH, SS.

SUPERIOR COURT
CIVIL ACTION
No. CA87-1908

TO RICHARD HALL, of Pembroke,
County of Plymouth, defendant your,

Agents, Attorneys, and each and every
of them.

, GREETING:

WHEREAS, it has been represented unto
us, in our Superior Court, by
Frank J. Camoscio, of
Boston County of Suffolk

Plaintiff, that the, said Plaintiff, has
exhibited a Complaint in our said Court
against you, the said defendant
Richard Hall

wherein said Plaintiff, among other things, pray for a Preliminary Injunction against you, the said defendant:

Richard Hall

WE THEREFORE, in consideration of the premises, do strictly enjoin and command you, the said Defendant, and all and every the persons before named, to desist and refrain from transfering, selling or otherwise disposing of the property located at 30 Elm Street, Pembroke, Ma.

until the further order of our said Court, or some Justice thereof.

Witness, THOMAS R. MORSE, JR., Esquire, at Plymouth, the thirteenth day of November in the year of our Lord one thousand nine hundred and

eighty-seven.

_____ Clerk.

Signed by: Clerk, Francis R. Powers.

KNOW ALL MEN BY THESE PRESENTS

that FRANCES M. HALL

in consideration of $ 67,267.10

paid by FRANK J. CAMOSCIO

the receipt whereof is hereby acknowledged, do hereby grant, sell, transfer and deliver unto the said FRANK J. CAMOSCIO. . . the following goods and chattels, namely:

MY COMPLETE HALF SHARE IN THE PROPERTY AT 30 ELM STREET, PEMBROKE, MASSACHUSETTS. WITH ALL ENCUMBRANCES and LIENS IF ANY.

To have and to hold all and singu-

iar the said goods and chattels to the said FRANK J. CAMOSCIO

and his executors, administrators, and assigns, to their own use and behoof forever.

And that I hereby covenant with the grantee that I AM the lawful owner ½ of the said goods and chattels that I have good right to sell the same as aforesaid; and that I will Warrant and defend the same against the lawful claims and demands of all persons.

In witness whereof the said FRANCES M. HALL

hereunto set her hand and seal this 12th day of APRIL in the year one thousand nine hundred and EIGHTY SIX

Signed and sealed in presence of

_____

FRANCES M. HALL

_____

FRANK J. CAMOSCIO

_____

Signed by: Frances M. Hall and
Frank J. Camoscio.

_____

DAVID J. GAGNON, NOTARY-SUFFOLK

Commission Expires June 12, 1992

_____

Notarized and signed by: David J. Gagnon.

THE COMMONWEALTH OF MASSACHUSETTS

THE TRIAL COURT

PROBATE FAMILY COURT DEPARTMENT

PROBATE & FAMILY CT.

No. 87E0093-G1

Plymouth Division

FRANK J. CAMOSCIO, Plaintiff

v.

RICHARD HALL, Defendant

MOTION TO DISMISS

It is hereby agreed by the parties with the advice of counsel that the following stipulation shall be made an order or judgment of this court:

1) BOTH PARTIES TO THE ABOVE ENTITLED ACTION HAVE REQUESTED THAT THIS HONORABLE COURT DISMISS THE COMPLAINT

IN THIS CASE (SEE DEFENDANT HALL'S SEVERAL MOTION'S TO DISMISS. SEE PLAINTIFFS' MOTION TO DISMISS DATED MARCH 3, 1988 ENTITLED TO DISMISS DATED MARCH 3, 1988" PRAYER #2)

2) DEFENDANT HALL HEREBY ASSENTS TO THE ALLOWANCE OF PLAINTIFF'S PRAYER PURSUANT TO PARAGRAPH (PRAYER #2) THAT THIS CASE BE TRANSFERED TO SUPERIOR COURT.

3) DEFENDANT HALL FURTHER ASSENTS TO THE DISMISSAL OF THIS CASE AS TO ALL PARTIES.

RICHARD HALL

BY HIS ATTORNEY

Signed by: Richard Hall's attorney

William J. Flynn, Jr.

DATED.

6/15/88

July 7, 1988

This matter came on for hearing in this court on this date. Frank J. Camoscio appeared pro se. Attorney William J. Flynn, Jr. appeared with his attorney, Robert J. Creedon. The plaintiff and defendant agreed that a similar motion had been heard in the Superior Court and the defendant's Motion to Dismiss had been allowed by Justice Constance M. Sweeney and that the plaintiff has taken an appeal from the allowance of the Motion to Dismiss and it is presently pending before the Massachusetts Appeals Court.

It is further agreed that the subject matter in the Superior Court case is identical to the subject matter pending here in the Plymouth Division of the Probate and Family Court Department. It was further agreed that this

matter should be disposed of in its entirety in the Superior Court Department.

This court hereby orders that the complaint shall be herewith dismissed.

By the court:

_____

James R. Lawton, First Justice
Probate and Family Court Department
Plymouth Division.

Signed by: James R. Lawton,
First Justice

Notarized and signed by Register:
John J. Daley.

SUPREME JUDICIAL COURT

FOR THE COMMONWEALTH

ROOM 1412 COURT HOUSE

BOSTON, MASSACHUSETTS 02108

(617) 725-8055

STATE SEAL

JEAN M. KENNETT
Clerk

FREDERICK J. QUINLAN
Assistant Clerk

L. HOLLIEY WHITE
Assistant Clerk
Pro Tem

October 20, 1992

Mr. Frank J. Camoscio
252 Hanover Street
Boston, Massachusetts 02113

Dear Mr. Camoscio:

I return to you herewith your Petition for Equity.

I have been instructed by the justices not to accept it for filing. Justice Abrams takes no part in matters pre-

sented by you.

Very truly yours,

Clerk

Signed by: Jean M. Kennett, Clerk,
Supreme Judicial Court for
the Commonwealth.